



STAFF REPORT

Proposed Amendments to Chapter 7, Belmont Municipal Code, Article XI, Property Maintenance and Abatement of Property Nuisances, Sections 7-401–7-500

Mayor and City Council of the City of Belmont
Belmont CA

Honorable Mayor and Council members:

Summary

Pursuant to City Council instruction, the staff is now in the process of proposing amendments to each chapter of the Belmont Municipal Code. The purpose of this comprehensive review is to update the code book by deletion of outdated material and insertion of language changes to reflect current City policy, practice and changes in the law since the adoption or last amendment of the code book. Staff now recommends language changes to Chapter 7, Article XI, Property Maintenance and Abatement of Property Nuisances.

Background and Discussion

The City's current Property Maintenance Ordinance was adopted in 1987. It has been amended since that time and currently reads as follows:

ARTICLE XI. PROPERTY MAINTENANCE
AND ABATEMENT OF PROPERTY
NUISANCES

Sec. 7-401. Classification of nuisances.

The following acts and conditions, when performed or existing upon any lot, piece or parcel of land within the City of Belmont, are hereby defined as and declared to be public nuisances when of

such magnitude as to be injurious or potentially injurious to the public health, safety and welfare or which have a tendency to degrade the appearance and property values of surrounding property or which cause damage to public rights-of-way:

(1) *Property:*

a. Land where erosion, subsidence, or surface water drainage problems exist.

b. Overgrown vegetation; dead, decayed, diseased, or hazardous trees; weeds and other vegetation likely to harbor rats, vermin or nuisances or which may be a fire hazard.

c. Storage for a period longer than seven (7) days of any of the following:

(1) Abandoned, wrecked, dismantled motor vehicles, trailers, campers, boats or similar vehicles, or similar vehicles which are inoperative or unregistered for operation.

(2) Debris, rubbish, and trash visible from public rights-of-way.

(3) Broken or discarded household furnishings, appliances, boxes and cartons, lawn maintenance equipment, play equipment, toys and similar materials.

(4) Discarded building materials.

(5) Discarded, wrecked or inoperable household appliances, machines and tools.

(6) Materials or items of any nature stored on roof tops.

(7) Garbage or trash cans or containers stored in front or side yards and visible from public streets or garbage or trash cans or containers which cause offensive odors to neighbors.

d. Attractive nuisances (those objects which, by their nature, may attract children or other curious individuals) including but not limited to unprotected and/or hazardous pools, ponds, ice boxes, refrigerators, excavations, or personal property not expressly incorporated into the landscaping or which is likely to cause injury

to children or other curious individuals.

e. Clothes lines in front yard areas.

f. Parking of any vehicle on areas which are not expressly paved and/or otherwise surfaced to allow the parking of vehicles.

g. Storage for a period of longer than sixty (60) days of any building materials.

(2) Structures or buildings, both permanent and temporary, or other lot improvements, which are subject to any of the following conditions:

a. Are structurally unsafe, either entirely or in part.

b. Constitute a fire hazard.

c. Have faulty weather protection, including but not limited to crumbling, cracked, missing, broken or loose exterior plaster or other siding, roofs, foundations or floors (including lack of paint or other protective finish), broken or missing windows or doors.

d. A building or structure which is not completed within a reasonable time or for which the permit for such construction has expired.

e. Unoccupied buildings which have been left unlocked or otherwise open or unsecured from intrusion by persons, animals or the elements.

f. Fences or walls which violate zoning regulations regarding height, or which are in a hazardous condition, or which are in disrepair, or which hinder free access to public sidewalks.

g. Signs, both on-site and off-site (billboards), which advertise uses no longer conducted or products no longer sold on the premises, except where such signs are legally permitted.

h. Conduct of a business on property where the business is not entirely conducted within the structure in violation of the zoning ordinance and is not a legal non-conforming use pursuant to other provisions of this code or the zoning code.

Sec. 7-402. Declaration of nuisance.

Whenever the city manager or his or her designee finds that a nuisance, as defined by section 7-401, exists on any premises located within the city, he/she shall advise the property owner of the nuisance and direct him/her to abate the nuisance by a specified date. The amount of time allowed to abate a nuisance shall be determined by considering the severity of the nuisance and its effect on the health, safety, welfare and aesthetics of the community. The property owner shall be notified of the existence of the nuisance in writing. The notification shall detail the violations.

Sec. 7-403. Voluntary abatement of nuisances.

The owner or tenant of any building, structure or property found to be a nuisance under the provisions of this article may abate the nuisance at any time within the abatement period by rehabilitation, repair, removal or demolition. The city manager or his or her designee shall be advised of the abatement and shall inspect the premises to ensure that the nuisance has in fact been abated. Any necessary permits and/or approvals shall be obtained by the owner or tenant.

Sec. 7-404. Failure to voluntarily abate a declared nuisance.

If a nuisance is not properly abated within the period established under the provisions of section 7-402, the planning commission shall hold a public hearing to determine if the declared nuisance should be abated under the police powers of the city.

Sec. 7-405. Notice of public hearing.

A written notice of public hearing shall be served on the property owner at least ten (10) days prior to the date set for the planning commission public hearing. Service shall be made by personal service upon the owner or by certified or registered mail. If there is no known address for the owner, the notice shall be sent in care of the property address. "Owner" as used herein shall mean any person(s) shown as the property owner on the latest equalized property tax assessment rolls, or otherwise known to be the owner. In addition, notice of the hearing shall be published in a newspaper

of general circulation in the city at least ten (10) calendar days before the hearing. The failure of any person to receive such notice shall not affect the validity of the proceedings.

Sec. 7-406. Form of notice of public hearing.

Notice substantially in the following form shall be given as provided in section 7-405:

NOTICE OF PUBLIC HEARING TO
DETERMINE EXISTENCE OF PUBLIC
NUISANCE AND TO ABATE IN WHOLE OR
PART

“Notice is hereby given that on the _____ day of _____, 19____, the Planning Commission of the City of Belmont will hold a public hearing at _____, to ascertain whether certain premises situated in the City of Belmont, State of California, known and designated as _____ constitute a public nuisance subject to abatement by the rehabilitation of such premises or by the repair or demolition of buildings or structures situated thereon. If said premises, in whole or in part, are found to constitute a public nuisance as defined by Sections _____ and _____ of the Municipal Code and if the same are not promptly abated by the owner, such nuisances may be abated by municipal authorities, in which case the cost of such rehabilitation, repair or demolition will be assessed upon such premises and such cost will constitute a lien upon such land until paid.

“Said alleged violations consist of the following:
_____.

“Said methods of abatement available are:
_____.

“All persons having any objection to, or interest in, said matters are hereby notified to attend a hearing before the Planning Commission of the City to be

held on the _____ day of _____,
19____, at the hour of _____M., when their
testimony and evidence will be heard and given due
consideration.

“DATED: This _____ day of _____,
19_____.

City Manager or his or her Designee”

Sec. 7-407. Hearing by the planning commission.

At the time and place stated in the notice of public hearing, the planning commission shall hear and consider all relevant evidence, objections or protests, and shall receive testimony for owners, witnesses, city personnel and interested persons relative to such alleged public nuisance and to proposed abatement measures. The hearing may be continued from time to time.

Sec. 7-408. Decision of the planning commission.

(a) Following the public hearing, the planning commission shall consider all evidence and determine whether the premises, or any part of the premises, constitutes a public nuisance as alleged. If the commission finds that a public nuisance does exist and that there is sufficient cause to abate the nuisance, the planning commission shall make a written order setting forth the findings and ordering the owner or other person having charge or control of the premises to abate the nuisance by rehabilitation, repair or demolition in the manner and by the means specifically set forth in the commission order. The order shall set forth the times within which the work shall be commenced and completed.

(b) Within ten (10) days from the date of the mailing of the order, the owner or person occupying or controlling such lot or premises affected, or any other person, may appeal to the city council. Such appeal shall be in writing and shall be filed with the city clerk. At a meeting of the city council not more than thirty (30) days thereafter, it shall proceed to hear and pass upon the appeal. Notice of the appeal proceeding shall be given as provided in section 7-405. The decision of the city council thereupon shall be final and conclusive.

Sec. 7-409. Limitation on filing judicial action.

Any owner or other interested persons having objections or feeling aggrieved at any proceeding taken on appeal by the city council in ordering the abatement of any public nuisance under the provisions of this article must bring an action to contest such decision within thirty (30) days after the date of such decision of the city council; otherwise, all objections to such decision shall be deemed waived.

Sec. 7-410. Service of the abatement order.

Within ten (10) days following the commission decision, the property owner and/or the person having charge or control of the premises shall be served with a copy of the written order of the commission in the manner provided in section 7-405.

Sec. 7-411. Abatement by property owner.

The property owner, or person having charge or control of the property, may at his own expense abate the nuisance as prescribed by the order of the planning commission prior to the expiration of the abatement period set forth in the order. If the nuisance has been inspected by a representative of the community development department and has been abated in accordance with the order, proceedings shall be terminated.

Sec. 7-412. Abatement by the city.

If a declared nuisance is not completely abated by the owner or person having charge or control of the property within the time prescribed in the planning commission order, the city manager or his or her designee is authorized and directed to cause the nuisance to be abated by city forces or private contract. In furtherance of this section, the city manager or his or her designated agent(s) is expressly authorized to enter upon the premises for the purpose of abating the nuisance.

Sec. 7-413. Record of cost for abatement.

(a) The city manager or his or her designee shall keep an account of the costs (including incidental expenses) of abating such nuisance on each separate lot or parcel of land where the work is done and shall render an itemized report in writing to the city council showing the cost of abatement and the rehabilitating,

demolishing or repairing of the premises, buildings or structures, including any salvage value relating thereto; provided that before the report is submitted to the city council, a copy of the same shall be served in accordance with the provisions of section 7-405, together with a notice of the time when the report shall be heard by the city council for confirmation.

(b) The city council shall set the matter for hearing to determine the correctness or reasonableness, or both, of such costs.

(c) Proof of service shall be made by declaration under penalty of perjury filed with the city clerk.

(d) The term “incidental expenses” shall include, but not be limited to, the actual expenses and costs of the city in the preparation of notices, specifications and contracts, and in inspecting the work, and the costs of printing and mailing required hereunder.

Sec. 7-414. Report; hearing and proceedings.

At the time and place fixed for receiving and considering the report, the city council shall hear and pass upon the reports of such costs of abatement, together with any objections or protests. Thereupon, the city council may make such revision, correction or modification in the report, as it may deem just, after which, by motion, the report, as submitted or as revised, corrected or modified, shall be confirmed. The decision of the city council on all protests and objections which may be made shall be final and conclusive.

Sec. 7-415. Assessment of costs against property; lien.

The total cost for abating such nuisance, as so confirmed by the city council, shall constitute a special assessment against the respective lot or parcel of land to which it relates, and upon recordation in the office of the county recorder of a notice of lien, as so made and confirmed, shall constitute a lien on the property for the amount of such assessment.

(1) After such confirmation and recordation, a copy may be turned over to the tax collector for the city, whereupon it shall be the duty of the tax collector to add the amounts of the respective assessments to the next regular tax bills levied against the

respective lots and parcels of land for municipal purposes; and thereafter the amounts shall be collected at the same time and in the same manner as ordinary municipal taxes are collected, and shall be subject to the same penalties and the same procedure under foreclosure and sale in case of delinquency as provided for ordinary municipal taxes; or

(2) After such recordation, such lien may be foreclosed by judicial or other sale in the manner and means provided by law.

Such notice of lien for recordation shall be in form substantially as follows:

NOTICE OF LIEN

(Claim of City of Belmont)

“Pursuant to the authority vested by the provisions of Section 7-412 of the City of Belmont Municipal Code, the City Manager of the City of Belmont, or his or her designee, did on or about the _____ day of _____, 19____, cause the premises hereinafter described to be rehabilitated or the building or structure on the property hereinafter described, to be repaired or demolished in order to abate a public nuisance on said real property; and the City Council of the City of Belmont did on the _____ day of _____, 19____, assess the cost of such rehabilitation, repair or demolition upon the real property hereinafter described; and the same has not been paid nor any part thereof; and that said City of Belmont does hereby claim a lien on such rehabilitation, repair or demolition in the amount of said assessment, to wit: the sum of \$_____; and the same shall be a lien upon said real property until the same has been paid in full and discharged of record.

“The real property hereinbefore mentioned, and upon which a lien is claimed, is that certain parcel of land lying and being in the City of Belmont, County of San Mateo, State of California, and particularly described as follows:

(DESCRIPTION)

“DATED: This _____ day of _____,
19____.

City Manager of the
City of Belmont, California

(ACKNOWLEDGMENT)”

Sec. 7-416. Violations.

(a) The owner or other person having charge or control of any such buildings or premises who maintains any public nuisance defined in this article, or who violates any order of abatement served as provided in section 7-410, is guilty of a misdemeanor.

(b) Any occupant or lessee in possession of any such building or structure who fails to vacate such building or structure in accordance with an order given as provided in this article is guilty of a misdemeanor.

(c) Any person who removes any notice or order posted as required in this article, for the purpose of interfering with the enforcement of the provisions of this article, is guilty of a misdemeanor.

(d) Any person who obstructs, impedes or interferes with any representative of the city council or with any representative of a city department or with any person who owns or holds any estate or interest in a building which has been ordered to be vacated, repaired, rehabilitated or demolished, or with any person to whom any such building has been lawfully sold pursuant to the provisions of this article when any of the aforementioned individuals are lawfully engaged in proceedings involving the abatement of a nuisance is guilty of a misdemeanor.

Sec. 7-417. Alternatives.

Nothing in the foregoing sections shall be deemed to prevent the city council from ordering the city attorney to commence a civil or criminal proceeding to abate a public nuisance under applicable civil or penal code provisions as an alternative to the proceedings

as set forth herein.

Secs. 7-418–7-500. Reserved.

By Resolution No. 9113 adopted on November 13, 2001, the City Council established a Statement of Code Enforcement Policies to guide staff in its enforcement of the Property Maintenance Ordinance's provisions. See Attachment A. The Council on February 24, 2004 updated the Statement of Code Enforcement Policies establishing a 6 month trial period for anonymous complaints. See Attachment B. The practice used by staff pursuant to these policy statements requires that a written request for voluntary compliance be directed to the property owners. If no voluntary compliance is achieved, the matter is referred to the City Attorney. If the property owner still refuses to bring the property into compliance, a civil or criminal complaint is filed. The civil complaint requests the court to order compliance and award attorney's fees to the City. The criminal complaint is filed as a misdemeanor or infraction. If convicted, the property owner can be jailed or fined by the court.

The ordinance as currently drafted also provides for an alternative public hearing process to declare a property a public nuisance and then to “clean and lien” the property. This enforcement method involves a public hearing before the Planning Commission and the right to appeal a Planning Commission finding of a public nuisance to the City Council. If the property is declared to be a public nuisance, the City is authorized to “clean and lien” the property. Prior to entering the property to abate a declared public nuisance, a court order is required. Conner v. City of Santa Ana (1990) 897 F.2d 1487. In order to lien the property to recover the cost of cleanup, a public hearing must be conducted by the City Council. A property owner who objects to the declaration of a public nuisance or lien process can make application to the San Mateo Superior Court for a writ to set aside the City's decision. This method of enforcement is not currently utilized.

Prior to drafting amendments to the ordinance, the City Attorney is seeking direction from the City Council on violations and enforcement mechanisms so that the amendments will accurately reflect the City Council's desires.

Violations

Over the last several months, the City Attorney has received requests to present the City Council with additional categories of violations for consideration in amending the ordinance. These include:

- a. Large storage containers placed either in the public right-of-way or in areas visible from the public right-of-way.
- b. Recreational vehicles parked in driveways or other areas of property visible from the public right-of-way.

Enforcement Mechanisms

City staff, as part of the budget process, proposed to analyze the efficacy of an administrative citation process. This would entail establishment of a hearing officer/board to hold administrative hearings regarding code violations.

The City Council is requested to provide direction on the following:

1. Should the above enumerated categories of violations be considered for addition in the amendment of this ordinance?
2. Are there any other categories of violation to be added or deleted in the amendment?
3. What enforcement procedures should be considered when amending the ordinance (i.e., administrative citation hearings, Planning Commission/City Council hearings as provided for in the current ordinance, continued enforcement via civil and criminal complaints)?

Once the City Council has given direction on these, and any additional issues it identifies as important, the City Attorney will work with the appropriate departments to revise the language found at Section 7-401 and present a revised ordinance for review and adoption.

Fiscal Impact

None. While there is no fiscal impact in the ordinance review process, there may be a fiscal impact based upon the direction given by the City Council.

Alternatives

1. Instruct that no changes be made to Chapter 7, Article XI.

Public Contact

This matter was placed on the agenda and posted as required by the California Government Code.

Attachments

- A. Resolution No. 9113, Statement of Code Enforcement Policies
- B. Resolution No. 9509, Statement of Code Enforcement Policies

Respectfully submitted,

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City Attorney